



HIGHLAND CITY APPEAL AUTHORITY

Wednesday, May 15, 2024

Approved May 29, 2024

Highland City, 5400 West Civic Center Drive, Highland UT 84003

<https://us02web.zoom.us/j/82720126059>

Appeal Officer Craig Call

2:00 PM CALL TO ORDER

The meeting was called to order at 2:00 pm. The meeting agenda was posted on the Utah State Public Meeting Website at least 24 hours prior to the meeting.

Present: Appeal Officer Craig Call, City Attorney/Planning & Zoning Administrator Rob Patterson, City Recorder Stephannie Cottle, Assistant City Administrator/Community Development Director, Jay Baughman, Applicant Kirk Ouimet

1. APPEAL

Variance Hearing – Kirk Ouimet regarding a fence on their property, 10282 N 5880 W.

Appeal Officer Craig Call began the hearing by stating that he had no previous information except what was included in his packet. He did visit the property and took 2 photos which will be included with the record.

This hearing focused on a request for a variance from the requirement that a fence be located no closer to the street than the setback required for a residence on a residential lot, which is a 30-foot setback in the specified zone. The lot in question has no structures on it but is a buildable lot that has been landscaped attractively with amenities for family and neighbor use.

The authority acknowledged the purpose of the variance process: to provide relief when applying rules to a property would interfere with protected property interests, potentially infringing on constitutional rights. In this specific case, Mr. Call expressed difficulty in determining if the requested variance involved a significant enough property right to override the city council's established rules. They needed to establish that the denial of the variance would cause an unreasonable hardship and interfere with substantial property rights enjoyed by others in the area.

Kirk Ouimet stated they moved from Provo to Highland in 2022 and constructed a home with Cambridge Home on a merged cul-de-sac lot. The design included a landscaped area with a hill, grassy play area, and a walking path for family and community use. Their home was the most visited home in the Parade of Homes, and after construction, they encountered a problem when over 30,000 visitors thought the lot was a public park. This led to safety concerns when a child was injured while playing without protective gear. To address this, they consulted with Cambridge Home and installed an open-style fence with a gate and a No trespassing sign to prevent unauthorized access. This measure required visitors to ask for permission before using the yard, ensuring safety and reducing the misuse of the property. However, the city later informed them that the fence did not have a permit. The applicant, unaware of the permit requirement, had relied on the builder to handle

these details. Afterward, they sought the proper permit and began understanding local regulations. Support from a neighbor, who also found the public intrusion bothersome, reinforced their request for the fence variance. Mr. Ouimet stressed that the fence helps distinguish their property from a public park, thus mitigating safety risks and maintaining some privacy. Removing the fence would lead to continued public misuse and potential injuries on the property.

Rob Patterson addressed the situation regarding the fence on Mr. Ouimet's property. They acknowledged the well-maintained yard but emphasized the necessity to apply city code fairly. He noted the primary issue: determining if the variance involved a substantial property right. Typically, residential properties in Highland have a clear delineation of private front yards due to the presence of a home, making the 30-foot setback obvious. However, this situation is unique, with a landscaped lot without a home, leading to public confusion about the property's private status. In this case, it may be suggested that treating the property akin to a sidewalk might justify allowing the type of open-style fencing which has been installed, as such fencing is permitted next to sidewalks.

However, despite the expense and effort previously invested in the landscaping, moving the fence 30 feet back wouldn't eliminate the primary use of the property, unlike cases where setbacks would render a property unusable for building. Therefore, Mr. Patterson questioned whether the variance met the threshold of impacting a substantial property right. If the variance were granted, the city requested a condition: the lot and fencing should be treated as sidewalk fencing until a home is built. This condition would ensure the fencing adheres to city standards if the property is developed in the future.

Mr. Ouimet stated that he has already combined two lots into one and would be happy to combine the remaining lot with the other two if that would help the city feel that there is a guarantee that the other lot wouldn't be built upon. He asked if that would help qualify this property as a side lot. Mr. Patterson stated that might be an option if the variance doesn't go through; however, there would be a substantial expense to remove the utilities to that third lot, as the city only allows one connection per parcel. The discussion continued regarding the types of fences that are allowed on side lots. Mr. Patterson gave another example of a property in Highland with similar circumstances and stated because of the unique situation it may warrant the variance.

Mr. Call stated it was fair to consider this as more side/backyard use because the property configuration is unique with the lots being used together for one residential purpose. The variance could be conditioned to provide, that if lots are separated, then the variance would be void. Mr. Call stated he was inclined to grant the variance.

The meeting adjourned at 2:24 pm.

ADJOURNMENT

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on May 15, 2024. This document constitutes the official minutes for the Appeal Authority Meeting.



Stephannie Cottle, CMC
City Recorder